



**WATER ENVIRONMENT
ASSOCIATION OF TEXAS**
Preserving & Enhancing the Water Environment of Texas

&



December 15, 2017

Mr. Brian Sierant
Water Quality Division
PO Box 13087, MC-150
Austin, Texas 78711-3087

Re: 30 TAC Chapter 312 Biosolids Stakeholder Comments

Dear Mr. Sierant,

The Water Environment Association of Texas (WEAT) and Texas Association of Clean Water Agencies (TACWA) appreciate the opportunity to provide input on the above referenced proposed rules (the "Rules"). WEAT and TACWA members are responsible for the design, operation, and maintenance of publically owned wastewater collection and treatment systems all across Texas. As such, our members have extensive first-hand knowledge and experience with the land application of biosolids as well as a vested interest in ensuring that the Rules are protective of the environment and water quality, reflective of biosolids' value to Texas farmers and soils, and not unjustifiably burdensome or costly for the water quality industry.

Introduction

We understand and agree with revision of the Rules to provide clarity, remove inconsistency, and improve readability. WEAT and TACWA have respectfully provided comments below with the consistency, clarification, and readability of 30 TAC Chapter 312 in mind, as well as consideration of water quality protection, the many benefits biosolids provide as a soil amendment, and sustainable and justifiable approach to resource recovery undertaken by the water quality industry.

Grit Trap and Grease Trap Waste Prohibition

WEAT and TACWA recommend that the TCEQ define "grease trap waste" and "grit trap waste" in a way that is consistent with those terms as they are defined in 30 TAC Chapter 330. Specifically, we suggest the following definitions be included in Chapter 312.3:

Grease trap waste--Material collected in and from a grease interceptor in the sanitary sewer service line of a commercial, institutional, or industrial food service or processing establishment, including the solids resulting from dewatering processes.

Grit trap waste--Grit trap waste includes waste from interceptors placed in the drains prior to entering the sewer system at maintenance and repair shops, automobile service stations, car washes, laundries, and other similar establishments.

We further recommend that the TCEQ ***explicitly prohibit*** the land application of grease and grit trap waste, while making clear that the TCEQ, through this rulemaking, is not seeking to prohibit the use of grease trap waste in accordance with current composting rules, or to prevent the landfilling of either grease or grit trap waste. Specifically, we recommend that the following be incorporated into Chapter 312:

Land application of grit or grease trap waste is prohibited. However, this prohibition shall not apply to disposal or treatment of grease or grit trap waste pursuant to a permit, registration, or notification issued by the commission for the processing and/or disposal of grit or grease trap waste at a municipal solid waste Type I landfill, a municipal solid waste Type V facility, or a compost facility in accordance with Chapter 330 or Chapter 332 of this title.

While grease and grease trap waste can be an important component in anaerobic digestion on the front end of the headworks, untreated grit and grease trap waste added to treated domestic sewage sludge, or biosolids, does not meet the rigorous standards for pathogen control and vector attraction nor does untreated grease or grit trap waste meet the definition of a useful soil amendment. Therefore, WEAT/TACWA strongly advises against the permitting of land application of biosolids (see suggested definition below) sewage sludge with the addition of grease trap and grit trap waste to treated sewage sludge.

Domestic Septage

WEAT and TACWA are committed to the continued use and treatment of biosolids as a beneficial, extensively studied, rigorously monitored and regulated soil amendment. Domestic septage is not held to the same regulatory standards or permitting approach. Because of this, WEAT/TACWA's overarching comment is to create a separate subchapter and definition for domestic septage. To accomplish this, a revised definition of "Sewage Sludge" in 312.8(74) is suggested (see WEAT/TACWA's Biosolids definition in this document) that removes the words "domestic septage".

Please see Appendix A for redline changes.

WEAT respectfully requests a meeting to discuss the redline changes further.

Buffer Zone Requirements (§ 312.44(c))

WEAT proposes to revise 30 TAC § 312.44(c) such that the buffer zone requirements apply to permits or registrations for land application of bulk sewage sludge or domestic septage only at the time of initial permit issuance and upon a major amendment to increase the area of the land application site. This revision is necessary to ensure that permittees and registrants are not penalized for post-permit/registration issuance activities on adjacent land that are beyond their control. This revision is critical because without it, TCEQ is effectively requiring permittees to own enough property to satisfy even the most stringent buffer zone requirement to ensure that the buffer zone requirements can be met in perpetuity. However, such ownership is not always possible, feasible, or practical, especially when the permittee is a political subdivision.

Particularly, WEAT proposes that the applicant only has to demonstrate satisfaction of the buffer zone requirements in two circumstances: (1) the initial permit/registration issuance, and (2) a major amendment to expand the area of the land application unit. The demonstration of compliance

with the buffer zones for the latter, however, would be limited to the area to be added to the land application unit, thus precluding a re-evaluation of satisfaction of the buffer zone requirement for the permitted land application unit). Whether the buffer zones have been satisfied would not be evaluated upon a renewal, a major amendment that does not include the expansion of the land application unit, or a minor amendment. Additionally, existing permits and registrations would be grandfathered into the new rules. Upon renewal or amendment, permittees/registrants would not be required to re-establish satisfaction of the buffer zones requirements because such a demonstration has already been made.

Most importantly, WEAT's proposed rule language clarifies that activities that occur outside of the property owned by and outside of the control of the permittee/registrant once the permit/registration is issued cannot affect the satisfaction of buffer zone requirements that had been met by the permittee/registrant previously. In short, changed conditions over which the permittee/registrant has no control cannot be used to negatively impact the permittee's/registrant's ability to use their land application site as originally intended.

Consistent with the purpose of WEAT's proposed revision to timing of the application of the buffer zone requirements in § 312.44(c), WEAT also proposes that TCEQ clarify that waivers of applicable buffer zone rules will apply in perpetuity in § 312.44(d). Permit and registrants develop their land application plans in reliance on such waivers. Under the current rules, it is unclear whether a waiver may later be revoked by a subsequent landowner or authority. WEAT's proposed revision would make clear that once the buffer zone requirement has been waived, it may not, at some unknown time in the future, be reapplied. Thus, permittees and registrants are given the certainty they need to maintain continuous and reliable land application operations.

An alternative approach to the one proposed by WEAT, below, is to set buffer zone requirements as a minimum distance from the property line—consistent with the buffer zones for wastewater treatment plants—and reduce the current buffer zone footage accordingly.

WEAT and TACWA understand that buffer zone requirements are contentious issues as Texas' population continues to grow and the urban or suburban increasingly move into previously rural land. We recommend the following changes and additions are made as outlined in Appendix B.

See Appendix B for redline of suggested changes.

Overall, WEAT and TACWA strongly believe that buffer zones apply only at the time of a permit or registration issuance and should not be adjusted due to the new placement of an occupied structure after a permit or registration has been issued.

Metal Concentration Limits

WEAT requests TCEQ revise the metal concentration limits established in 30 TAC 312.43(b) for chromium and selenium to be consistent with the limits established in 40 CFR Part 503.13(b). The metal limits established by EPA are risk-based to protect public health and the environment from reasonably anticipated adverse effects of pollutants that may be present in biosolids (sewage sludge) that are used or disposed. The EPA document *A Guide to the Biosolids Risk Assessments for the EPA Part 503 Rule*, September 1995 (EPA/832-B-93-005), provides supporting documentation and a description of the lengthy assessment process that was conducted prior to issuance of the current 503 Rule.

The EPA Risk Assessment document explains chromium is not a risk for land application and the risk-based limit for selenium is 100 milligrams per kilogram (mg/kg). Therefore, WEAT requests TCEQ delete the chromium limits in all four tables in 30 TAC 312.41(b) and revise the selenium concentration limit in Table 3 of 30 TAC 312.41(b)(3) from 36 mg/kg to 100 mg/kg.

Biosolids Definition

WEAT supports the inclusion of a definition for the term biosolids in the rule revision, to reflect the different characteristics of biosolids, as opposed to untreated sludge. This revision would be consistent with other states (for example, Virginia, Washington and Ohio) that have recently updated their regulations for these products. Any references to material meeting this definition in the regulation would need to be modified accordingly. Additionally, the 30 TAC 312 chapter title may need to be modified: the title "Biosolids Use, Sludge Disposal and Transportation" might be considered.

We specifically suggest the following definition for inclusion in 30 TAC 312.8:

"Biosolids" means a sewage sludge that has received an established treatment and is managed in a manner to meet the required pathogen control and vector attraction reduction, and contains concentrations of regulated pollutants below the ceiling limits established in 30 TAC 312.43, such that it meets the standards established for use of biosolids for land application, marketing, or distribution in accordance with this chapter.

Subchapter B & D Comments

Subchapter B

- 312.44(j)(4) – "...may be subject to an Odor Control Plan on a case-by-case basis." This creates a significant amount of uncertainty for a utility. It would be best to have some conditions that MAY trigger an odor control plan to be required. This could include the odor source being within a certain distance of the fence line, population density of the neighboring properties at time or permit, and previous TCEQ investigations for odor complaints at an existing site.
 - The requirements of an odor control plan are also not defined. Subchapter B should define the minimum requirements of an odor control plan, such as identifying sludge storage times, location of nearest sensitive receptors, and/or anticipated impact of odor control measures to mitigate nuisance odor complaints.

Subchapter D

- 312.83(a)(1)(B) - "The executive director may deny the variance request or revoke that approved variance if it is determined that the variance may...create nuisance odor conditions." What is a nuisance odor condition? We don't want to get too detailed, but we need to have an objective way of defining this. Land application of biosolids has an odor just as many other farming practices do. So what is "normal" vs a nuisance. One suggestion is a time weighted average of a certain odor detection threshold, perhaps also associated with a defined number of odor complaints.

Overarching Subchapter B & D Comment

WEAT and TACWA would like to see the TCEQ establish measurable standards for “nuisance” conditions at a fence line that would enable you to know you’re either in compliance or you are not – like effluent standards. By doing so, the agency would eliminate the emotional component and try to better define the technical and scientific basis for nuisance conditions. WEAT and TACWA would also like to eliminate the question of who came first. A better rule would establish standards that aren’t dependent on what the neighbor does with his / her property. Overall, the definition and enforcement leeway for “nuisances” and “odors” are quite vague and too subjective.

WEAT and TACWA appreciate the opportunity to provide the above comments on 30 TAC Chapter 312. We also fully support and encourage the agency to make the additional administrative changes including the use of the term “biosolids as it pertains to beneficial land application of treated domestic sewage sludge and renaming Water Treatment Plant Sludge as Water Treatment Plant Residuals. WEAT and TACWA respectfully request the opportunity to sit down with your staff to discuss some of our more detailed comments contained within, as well as proposed reorganization of several areas to make the rules easier to understand; particularly the sections related to the required authorizations and processes for submitting or obtaining the permit/registration/notification. Again, thank you for the work you do and the opportunity to provide comments.

Sincerely,



Julie Nahrgang
WEAT | TACWA Executive Director